

Remarks

This is in response to the office action of 10/12/2006. Claims 18-20, 22-31, 35, 36, 38, and 40-42 were rejected under 35 USC 103(a). Claim 21 stands objected to but would be allowable if rewritten in independent form.

In this reply, new claims 43-46 have been added, and claims 26, 31, 38, 40, 41, and 42 have been canceled. After the amendments herein, claims 18-25, 27-30, 35, 36, 43-46 are pending. No additional claim fees are required. Reexamination and reconsideration in view of the comments below are requested.

Support for the claim amendments is as follows:

1. For amendments related to - right handed users have back-swing rotation and movements to the right, and left handed users to the left. See claim 27, see application, page 7, line 16-17 and page 8, lines 1-7 (discussing the motion for a right handed user), and page 9, line 3 (indicating that the right handed motions are reversed for left handed users).

2. For amendments related to - hands being adjacent to one another such that right handed users grip said rod with their right hand above the left hand, and left handed users grip said rod with their left hand above the right hand. See original claim 26, see application, page 7, lines 25-30; and Figures 2-2C.

3. For amendments related to - including standing up with the lower end of the rod positioned in an approximate area where said golf ball would be positioned relative to the user as if said user where going to hit said ball with a golf club. See claim 41.

35 U.S.C. §103 Rejections

Claims 18-20, 22-25, 27-30 and 41 stand rejected under 25 USC 103(a) as being unpatentable over Squires (US patent number 5403256). The claims have been amended, although applicant does not concede that the previously un-amended claims are not patentable and reserves the right to re-enter them or file them in a continuation application. For the reasons set forth below, it is believed that the claims as amended, and the new claims, are patentable.

The Squires reference discloses an aerobic apparatus. Various exercises using the aerobic apparatus are disclosed, see, e.g., Figs 5A - 6D. Nevertheless, none of the exercises disclosed in the patent reference remotely teach or suggest the limitations of the presently claimed invention.

The present invention is directed to exercises that stretch certain muscles related to the X-Factor Stretch for a golf swing – the gap between the hips and the shoulders as the golf club starts down toward the golf ball. See application, page 2, lines 5-12. The present invention helps to increase the X-Factor stretch with specific exercises. Claim 18, for example, requires:

a user of the rod doing the following:

- (a) placing said lower end of said rod on the ground in front of the user;
- (b) gripping said rod with both hands, said hands being adjacent to one another such that right handed users grip said rod with their right hand above the left hand, and left handed users grip said rod with their left hand above the right hand;
- (c) assuming the approximate position for addressing a golf ball, including standing up with the lower end of the rod positioned in an approximate area where said golf ball would be positioned relative to the user as if said user were going to hit said ball with a golf club; and
- (d) rotating the user's upper body and moving the user's arms to the back-swing position while maintaining said grip and keeping said lower end of said rod on the ground, wherein step (d) is carried out with right handed users rotating said upper body and moving said arms to the right and left handed users rotating said upper body and moving said arms to the left.

Squires does not recognize any type of exercise movement that is capable of improving the X-Factor stretch, and, moreover, it fails to disclose the combination of specific claim limitations. For example, Squires does not teach gripping both hands on the pole adjacent to one another in the particular position as claimed, and with

the swing and body motion in the particular direction as claimed. These limitations go directly to improving the X-Fact stretch of which the Squires reference is silent. No motivation has been provided for the numerous modifications of the Squires teachings that would be required to meet the limitations of claim 18. Squires does not teach the combination of limitations of claim 18, and provides no motivation or suggestion for such limitations. Such limitations can be made only via hindsight using the claimed invention as a guide. Accordingly, Claim 18 is believed patentable.

Claim 19, depending from claim 18, is further limited to "moving the user's arms to the finish-swing position while keeping said lower end of said rod member on the ground, wherein step (e) is carried out with right handed users moving said arms to the left and left handed users moving said arms to the right." This additional limitation is neither taught nor suggested in Squires and thus claim 19 is believed patentable in addition to the reasons set forth above for claim 18. Again, Squires has nothing to do with improving the X-Factor stretch and thus provides not teaching or suggestion relevant for it.

Independent claim 28, although slightly broader in some respects, it does not require rotating the upper part of the user's body, is similar to claim 18 and is believed patentable for similar reasons. Dependent claim 29, depending from claim 28, is believed patentable for reasons similar to those of claim 19.

New Independent claim 43 is similar to claim 18 and believed patentable for similar reasons. Moreover, it is more limited in some respects, e.g., "extending arms outwardly in front of said user". Claim 43, and dependent claim 44, are likewise believed patentable. Claim 45 adds the limitation that step (c) comprises positioning said lower end of said rod on the ground in an approximate area where a golf ball would be positioned relative to the user as if said user were going to hit said ball with a golf club. This further limitation is not taught or suggested. Likewise, claim 46

adds that step (b) comprises gripping said rod with said hands at a position to be at about chest height or higher when said lower end of said rod is placed on the ground. This limitation is not taught or suggested. Thus new claims 43-46 are believed patentable.

Conclusion

For the reasons set forth above, claims 18-25, 27-30, 35, 36, 43-46 are believed patentable. Allowance of the claims is respectfully requested. If any issues remain, applicant respectfully requests and interview before the next office action is issued.

Respectfully submitted,

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